

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:)
GUANTANAMO BAY)
DETAINEE LITIGATION)
)
) Misc. No. 08-442 (TFH)¹
)
) Civil Action Nos.
)
) 02-CV-0828, 04-CV-1164, 04-CV-1166, 04-CV-1194,
) 04-CV-1254, 04-CV-2022, 04-CV-2215, 05-CV-0023,
) 05-CV-0280, 05-CV-0329, 05-CV-0359, 05-CV-0392,
) 05-CV-0429, 05-CV-0492, 05-CV-0520, 05-CV-0569,
) 05-CV-0634, 05-CV-0748, 05-CV-0764, 05-CV-0877,
) 05-CV-0883, 05-CV-0892, 05-CV-0999, 05-CV-1048,
) 05-CV-1101, 05-CV-1124, 05-CV-1189, 05-CV-1244,
) 05-CV-1312, 05-CV-1353, 05-CV-1429, 05-CV-1457,
) 05-CV-1490, 05-CV-1497, 05-CV-1504, 05-CV-1506,
) 05-CV-1509, 05-CV-1555, 05-CV-1592, 05-CV-1607,
) 05-CV-1623, 05-CV-1638, 05-CV-1645, 05-CV-1646,
) 05-CV-1971, 05-CV-1983, 05-CV-2088, 05-CV-2104,
) 05-CV-2185, 05-CV-2186, 05-CV-2199, 05-CV-2223,
) 05-CV-2249, 05-CV-2348, 05-CV-2349, 05-CV-2367,
) 05-CV-2371, 05-CV-2379, 05-CV-2380, 05-CV-2384,
) 05-CV-2385, 05-CV-2386, 05-CV-2387, 05-CV-2479,
) 06-CV-1668, 06-CV-1690, 06-CV-1691, 06-CV-1725,
) 06-CV-1765, 06-CV-1766, 06-CV-1767, 07-CV-1710,
) 07-CV-2337, 07-CV-2338, 08-CV-1173, 08-CV-1207,
) 08-CV-1228, 08-CV-1232, 08-CV-1233, 08-CV-1234,
) 08-CV-1235, 08-CV-1236, 08-CC-1237, 08-CV-1238,
) 08-CV-1360, 08-CV-1440, 08-CV-1645, 08-CV-1805,
) 08-CV-1828, 08-CV-1923, 08-CV-2019, 08-CV-2083,
) 09-CV-0031, 09-CV-0745, 09-CV-0873, 09-CV-0904,
) 09-CV-1385, 09-CV-1462, 09-CV-2368, 10-CV-0407,
) 10-CV-923, 10-CV-1020, 10-CV-1411
)

**NOTICE OF PRIVILEGE TEAM REVIEW OF DOCUMENTS
AND MATERIALS RECOVERED FROM JTF-GTMO CAMP 6**

¹ Respondents have filed this notice in all Guantanamo Bay habeas cases in which at least one petitioner is currently held at Guantanamo Bay, whether the case remains pending or not.

Respondents hereby provide notice that the Department of Defense intends to have the Department of Defense Habeas Privilege Team review certain documents and materials collected from the Joint Task Force-Guantanamo's Camp 6 detention facility in order to facilitate the return of materials, where appropriate, to the Guantanamo Bay detainee to whom the materials belong, where possible.

On April 13, 2013, upon order of the Commander, JTF-GTMO, detainees residing in Camp 6 were transitioned from communal to single-cell living to ensure the health and security of the detainees. This action was taken in response to efforts by detainees to limit the guard force's ability to observe the detainees, including by covering surveillance cameras, windows, sally port fences, and glass partitions. In order to reestablish proper observation of the detainees, the guards entered the Camp 6 communal living spaces and recreation yards to transition detainees into single cells; to remove obstructions to cameras, windows, and partitions; and to allow medical personnel to conduct individual assessments of each detainee due to an ongoing hunger strike.

During the transition operation, JTF-GTMO collected documents and materials from the communal areas of Camp 6. Prior to the transition operation, detainees residing in Camp 6 were authorized to congregate in designated communal areas and further permitted to bring authorized documents and materials with them to these areas. Many of the detainees routinely left materials in the communal areas, and consequently, those materials were still in the communal areas at the time of the transition operation. Materials belonging to a number of different detainees were collected and compiled from the same communal area and placed into bags or bins for storage pending sorting and review. JTF-GTMO personnel conducted a search for physical contraband while gathering the materials from the communal areas, but did not read or review the materials.

JTF-GTMO guards also collected all materials from inside individual detainees' assigned cells for temporary storage while the cells were appropriately secured and cleaned. During the collection of these materials, guards removed any unauthorized physical contraband that was discovered.² In addition, if, while collecting the materials and searching for unauthorized physical contraband, the guards discovered items that were clearly marked with the Internment Serial Number (ISN) of a detainee other than the detainee assigned to the cell being searched, the material was not returned to any particular detainee and, instead, placed with the communal materials.³ With the exception of the two categories of materials noted above – physical contraband and materials belonging to other detainees – JTF GTMO has returned, or attempted to return, to detainees the materials removed from their cells.⁴

Although the majority of materials have been returned to the detainees, JTF-GTMO is currently in possession of approximately one hundred five (105) bins and three (3) bags of documents and materials for which ownership cannot be determined without further review. These documents and materials were collected from the communal areas and cells during the April 2013 transition operation and from the communal area of one cell block of Camp 6 during a separate security operation in February 2013. These materials have been held and maintained exclusively by JTF-GTMO's Joint Detention Group (JDG). Other than the review described above for contraband and other detainee materials, which was conducted entirely by JDG guards

² At the time of the transition operation detainees were permitted to store materials either loosely in their cells or inside plastic storage bins placed inside the cells. Guards inspected both the bins and loose cell materials for physical contraband.

³ For example, during the operation guards discovered loose materials and storage bins marked with the ISN of a detainee not assigned to the cell where the materials were physically located.

⁴ Five detainees initially refused to accept their materials back. The nine bins of materials belonging to these detainees are also among the communal materials.

and officials, the materials have not been shared with other JTF-GTMO components, including any of JTF-GTMO's intelligence components, or outside government agencies. JTF-GTMO recognizes that some of the materials may be legal materials or attorney-client communications, and JTF-GTMO has not read or reviewed the materials other than as described above, that is, to remove physical contraband or materials that were found in the wrong cell. Out of an abundance of caution that the documents collected may include legal materials or attorney-client communications, and to respect the potential sensitivity of the recovered materials, the Department of Defense will have the Department of Defense Habeas Privilege Team inspect and review the materials currently in storage in an attempt to determine the proper owners of the recovered materials. *See Protective Order And Procedures For Counsel Access To Detainees At The United States Naval Station, Guantanamo Bay, Cuba, 577 F. Supp. 2d 143, 146, 156-163 (D.D.C. 2008)* (defining privilege team and explaining duties).

The Habeas Privilege Team's review of these materials will proceed on or after **DATE**, as follows:

The Privilege Team will conduct a review of the materials and separate them into the following categories:

1. Legal and non-legal materials that can be identified as belonging to a specific detainee;
2. Legal materials that can be identified as pertaining to a specific attorney (when they cannot be identified as belonging to a specific detainee);
3. Legal materials for which ownership cannot be determined;
4. Non-legal materials for which ownership cannot be determined;
5. Documents requiring translation to determine their status or ownership;

The Privilege Team will treat as legal material:

1. Any item that bears the Privilege Team's legal mail stamp, indicating that it is "Legal Mail approved by Privilege Team";
2. Any item that appears to be related to counsel's representation of a detainee that contains an obvious marking on the face of the document that references "attorney-detainee materials," "attorney-client communication," "attorney-client privileged materials," or similar, even if the item does not bear the Privilege Team's legal mail stamp;
3. Any materials created by the detainee that appear to be intended for his attorney. This may include hand-written notes on documents that would not be otherwise considered an attorney-client or matter without the notes.

Legal materials that can be attributed to a specific detainee will be placed in envelopes or appropriate containers marked with that detainee's ISN number. Those materials will be given to JTF-GTMO personnel for immediate return to the appropriate detainee. In the event legal materials cannot be associated with a specific detainee, the Privilege Team will attempt to determine whether the materials bear the name of an attorney. In instances in which the Privilege Team can associate the item with an attorney, but not a specific detainee, the Privilege Team will place the mail item in an appropriate envelope or container and process it for return to the attorney. If the Privilege Team identifies legal items that cannot be identified as belonging to either an attorney or a detainee, the Privilege Team, without disclosing potentially confidential or privileged information, will consult with the Department of Defense Office of General Counsel and the Department of Justice before taking further action. These entities will work with the

Privilege Team to identify workable solutions to get as many items as possible to their proper owner.⁵

Non-legal materials that can be attributed to a specific detainee will be placed in envelopes or appropriate containers marked with that detainee's ISN number. Those materials will be given to JTF-GTMO personnel for review to determine whether the materials have been or can be approved for delivery to the detainee. Non-legal materials for which ownership cannot be determined will be returned to JTF-GTMO for appropriate disposition.

The Privilege Team will secure and maintain any documents requiring translation prior to a determination of their status or ownership. The Privilege Team will arrange for appropriate translation of such documents, using translation resources otherwise available in the Privilege Team's execution of its duties under the Protective Order, and then review the documents, in the manner described above, in an effort to identify their status and ownership.⁶

In light of the additional role for the Privilege Team in context discussed above, and in the interest of transparency, Respondents hereby provide the foregoing Notice.

Dated: **DATE**

Respectfully submitted,

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⁵ Items that appear to be legal mail associated with military commissions proceedings will be returned to the detainee or military commission attorney if identifiable.

⁶ If, in its inspection of materials, the Privilege Team observes any item that reasonably could be expected to result in immediate and substantial harm to the national security or relates to imminent acts of violence, the Privilege Team will report the content of that item to the JTF-GTMO Commander. *See* Protective Order ¶ II.G.22-23.

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